IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Instafund Mortgage Management Corp. v. 1365651 BC Ltd,* 2025 BCSC 1680

Date: 20250619
Docket: H241096
Registry: Vancouver

Between:

Instafund Mortgage Management Corp.

Petitioner

And

1365651 B.C. Ltd., Jaswant Dhillon also known as Jaswant Singh Dhillon, CIC Equities Corp., His Majesty the King in Right of the Province of British Columbia, All Tenants and Occupiers of the Lands, Leila Joy Parra, Villamor Dela Cruz, Paul Ramirez, and Ariane Perez Dioneda

Respondents

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	A.E. Redford
Counsel for the Respondents, 1365651 B.C. Ltd., Jaswant Dhillon also known as Jaswant Singh Dhillon:	J.R. Pollard
No other appearances	
Place and Date of Trial/Hearing:	Vancouver, B.C. June 19, 2025
Place and Date of Judgment:	Vancouver, B.C. June 19, 2025

Table of Contents

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits without affecting the substance or final disposition.

Introduction/Issue in Dispute

[2] The application before the court is for an *order nisi* with a shortened one-day redemption period in respect of two adjoining properties that, although they have single family homes on them, one of which is tenanted, are within an area that has been designated by the official community plan as one that is suitable for development into higher density homes. Currently, however, these properties are not zoned as such.

[3] The amount to redeem is claimed at $2,381,362.22 for which no dispute is taken, other than as to some relatively inconsequential amounts claimed for protective disbursements that are not generally recoverable at the *order nisi* stage, namely appraisals which are more properly disbursements to be recovered as costs, a discharge fee that is not recoverable in a foreclosure given that the petitioner has demanded it be paid out, and NSF fees that may or may not be recoverable subject to the mortgage terms. There was a dispute as to interest rate, but that issue was resolved between the parties prior to today's application.

[4] There is no dispute as to there being a default.

[5] The sole issue before the court today is the appropriate redemption period, whether it ought to be one day as being sought, or the standard six months period to as provided for in s. 16(2) of the *Law and Equity Act,* R.S.B.C. 1996, c. 253 (the "*LEA*").

[6] The position of 1365651 BC Ltd., Jaswant Singh Dhillon and Jaswinder Kaur Dhillon (collectively, the "Mortgagors") is, simply, that the petitioner has failed to satisfy the requirement for a shortened redemption period at the *order nisi* stage, namely that there is a risk to the petitioner's security.

[7] This issue comes down to a battle of valuations, with disagreements being raised as to the modalities used by the appraisers specifically concerning the impact on value of the development potential, including a change in tack taken by the petitioners when it obtained appraisals to rely upon in making its decision to lend, versus when it did so for realization purposes.

Appraisal Evidence

Petitioner's Appraisals

[8] When the application for funding was made by the Mortgagors, the petitioners obtained an appraisal to determine the loan to value ("LTV") ratio, that being one of the considerations on which they lend, from John Volpe of Pacific West Appraisals. Those appraisals valued the properties as of May 7, 2023 based on "development potential", with the values of the two properties being appraised at $1,900,000 and $2,000,000 respectively, for a total value of the security at $3,900,000 (the "First Volpe Appraisals").

[9] However, for the purposes of proceeding with this foreclosure proceeding, a new set of appraisals was obtained from Macintosh Appraisals on January 9, 2025 (the "Macintosh Appraisals"). These appraisals, which notably are dated almost two years later than the First Volpe Appraisals, appraise both lots at the same value on an adjusted sale price range, being from $1,300,000 to $1,440,000, and a combined value of between $2,600,000 and $2,880,000.

[10] The following comment is contained in the Macintosh Appraisals, which suggests the petitioner gave instructions to not consider the development potential as was done in the First Volpe Appraisals:

> However, for the purposes of this report and as per our client's instructions, the highest and best use of the subject property is (hypothetically) its continued use as a single-family dwelling, without regard for any redevelopment, and has been appraised on that existing use basis.

[11] The appraisers go on to note that the highest and best use of the properties are as a “holding asset until it becomes economically viable to redevelop the site for a higher and more profitable purpose.”

[12] Not valuing based on development potential is not, on its own, of concern.

[13] In realization proceedings valuations are generally conducted on an "as is where is" basis, as it is trite that a foreclosing mortgagee, or any secured lender, is not required to wait for a more precipitous time to realize against its security, but may proceed when and how it wishes to do so as they find the property, provided the steps taken are not commercially unreasonable. Put more simply, a secured creditor is not required to wait for circumstances to change even if such a change may increase value, and it is not commercially unreasonable to realize on the property in its current condition, whatever that may be.

Mortgagor’s Appraisals

[14] In responding to these proceedings, the respondents obtained new and updated appraisals from Mr. Volpe (the “Second Volpe Appraisals”), in which the properties are appraised at $2,365,000 and $2,340,000 respectively, for a total value of $4,705,000.

[15] The significant qualifier to those appraisals is as follows:

> The highest and best use is to plot this property with neighbouring three properties to create a multiple family zoned site.

[16] In this respect, the Mortgagors had previously owned four lots adjoining each other: the two subject lots that are the subject of these proceedings as well as a lot on either side. Thus, the appraisals being relied upon assumes that the other adjoining properties can be brought into the development plan.

[17] However, one of those lots that is not subject to this proceeding has now been sold to a third party and is no longer within the control of the Mortgagors. The other unrelated lot, I am advised, remains owned by the Mortgagors, but is under foreclosure by a separate lender, such that it’s involvement in any development plan is uncertain.

[18] It is speculative as to whether the highest and best use as contemplated in the Second Volpe Appraisals could ever be obtained, as it is questionable whether or not the neighbouring properties could practically speaking be “plotted” so that they could collectively be developed for multifamily use purposes.

Preliminary “Election” Objection

[19] The Mortgagors raised a preliminary argument as to the petitioner’s reliance on the Macintosh Appraisals for the purpose of fixing the redemption period.

[20] The Mortgagors argue that the petitioners cannot now rely on an appraisal which ignores the development potential, and appraises on a strict “as is where is” basis given its decision to lend on that potential. In short, that a party cannot both hold out a position and take back a position as it chooses to do so.

[21] In this case, by taking the position, notably to decide to lend, that value is based on development potential, it ought to be held to that election.

[22] The Mortgagors rely on *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, 2018 BCSC 1591, where the issue as of approbation and reprobation was raised on an application to amend pleadings which the respondent argued were inconsistent. The court referenced *Deltaport Constructors Ltd. v. Vancouver Fraser Port Authority,* 2013 BCSC 1705 with respect to the common law doctrine of election:

> [19] For the common law doctrine of election to be engaged by inconsistent pleadings, three requirements must be met. These were recently described by the BC Court of Appeal in *Allnorth Consultants Ltd v Tercon Construction Ltd*, 2010 BCCA 570 [*Allnorth Consultants*]. At paragraph 23, the Court stated:
>
> > [23] After referring to other authorities, Fruman J. (as she then was) summarized at para. 75 the three requirements of election in the course of litigation as follows:
> >
> > > (i) there must be two alternative and mutually exclusive courses of action; (ii) the party that elected must have known of the facts giving rise to a right to elect between them; and (iii) the other party must have relied on the election to its detriment, in that it adopted or persevered in a line of conduct that it otherwise would have abandoned or modified.

[emphasis added]

[23] The reference to “inconsistent pleadings” and the election occurring “in the course of litigation” are notable in the cases where election has been argued, as it is generally in respect of the intention taken to take a position in the litigation itself.

[24] A decision to lend, which is a business case, is one made well before litigation. Obtaining an appraisal to guide that business decision pre-litigation will inherently involve a different risk analysis then when seeking to enforce security after a mortgagor has defaulted on its obligations, such default being an increase in risk in and of itself. I also note that most borrowers seek lending based on the most optimistic of conditions. Such optimism will fade once a lender is having to pursue realization.

[25] Regardless, I need not determine if an election argument is applicable to the case at bar because, ultimately, the onus is upon the petitioner to establish that there is risk to its security. This matter can be determined on that basis.

Analysis as to the Risk to the Petitioner’s Security

[26] As noted, the amount to redeem is, currently, just under $2.4 million with interest at what amounts to an approximate monthly rate of $21,000. Thus, at the end of a six-month redemption period, there will be approximately $2.5 million owing on this mortgage, perhaps a little bit higher.

[27] Even at the low end of the Macintosh Appraisals that have been put before the court, there is a slight buffer at $2.6 million.

[28] Any buffer at that low range is likely erased once the selling period is taken into account, given that there will be some time needed to obtain an offer once the properties are put on the market. This is particularly so where it does not appear that the intention of the Mortgagors is to market the property at this point but rather, if there is going to be a redemption by them they indicate it will likely be through refinancing, at least that seems to be the hope right now. Of course, the Mortgagors can change their mind tomorrow and put it on the market if they so wish. As long as there is a redemption period, it is up to the Mortgagors to determine how they wish to redeem. Of course, at the conduct of sale step, a reasonable prospect, and a more definitive plan for redemption, may be required.

However, it is not required at this stage. Nonetheless, as noted, it means that a sale, if conduct of sale is sought, will not likely be immediate.

[29] At the higher range of the Macintosh Appraisals, there is a $3 million buffer. That higher range does not support a finding that the usual six-month redemption period should not be used.

[30] When setting a redemption based on appraisals that have a range, one that suggests a *possibility* of risk at the low end, and no likely risk at the high end, the court should not proceed on the worst case scenario of the low-end values.

[31] The starting point in respect of a redemption period is s. 16(2) of the *LEA*, i.e. a six-month redemption period, with the onus being on the petitioners to establish a risk to their security realization.

[32] Appraisal evidence which, by its very nature, is evidence based on assumptions, guesses, and factors that may or may not be consistent with market value at the end of the day, provides useful guidance, but it is not definitive as to value. In saying that, I am cognizant that when conducting their appraisals, appraisals are bound by their professional guidelines as required by the Appraisal Institute of Canada, which include specific standards for mortgage financing, as opposed to court purposes (which may be relevant to the Mortgagor’s election argument), but it does mean that often it is the “best guess” as to market value.

[33] Thus, absent the properties being fully and properly exposed to the market to determine what a purchaser is willing to pay, the issue as to whether the security is at risk is generally made in a bit of a vacuum, albeit based on the best evidence that the court can have before it – appraisals.

[34] I will comment now on one controversial aspect of the evidence relied upon by the petitioners, that being an affidavit that was filed in reply, sworn by a realtor, Paul Hague, with Sotheby's International Realty. In all likelihood, although this was not in the evidence, this is the realtor that would be used to market this property, and I would assume that that is why he was prepared to provide further evidence as to value, and his opinion as to whether value is likely to fall within the worst case scenario under the Macintosh Appraisals or perhaps a more rosy one as indicated by the Second Volpe Appraisals.

[35] He has provided evidence as to a number of the factors that address development potential of these properties. I agree with counsel for the respondents that some of that evidence is not admissible as it is in the nature of opinion without him being established as an expert. Although he does set out his history and experience as a realtor, that expertise is limited to acting as a realtor. It is not, for example, a construction developer with knowledge of construction costs. Nonetheless, he does provide some data and supporting documents regarding some of the value problems with the current version of the official community plan.

[36] I am prepared to accept some of that evidence but for a very narrow purpose, namely to say that development is not a certainty.

[37] One of the examples in this respect is the threshold requirement of 21,500 square feet being available for consolidated lots before development will be considered under the official community plan. Since the combined lot size of the properties is 7,000 square feet below this, further land acquisition is needed. In other words, the higher end of the values based on the appraisal, assuming that is to be done, means, by its nature, that it is speculative that the higher value will be achieved.

[38] As noted, for the purposes of determining risk to security, the court is not and does not consider what might be, but considers only what is. The properties are not currently in a state capable of being redeveloped.

Conclusion and Orders Made

[39] Taking all of the evidence as to value and perhaps doing a rough and ready averaging of them taking into account that (a) even on the worst case scenario of the Macintosh Appraisals there is some buffer before there is a loss and (b) that developers may provide some value to the development potential when the properties are exposed to the open market, I am not satisfied that the petitioner has met the onus upon it to establish that there is risk to the security at this time. As such, I am not prepared to order a shortened redemption period.

[40] Finally, I wish to comment on one other element the petitioner raised which is of some concern, that being the conduct of delay by the Mortgagors. The petitioners argue that there have been delay tactics employed by the Mortgagors, including evading service resulting in an alternative service order, and a series of

adjournments that were granted to accommodate the respondents in obtaining their evidence for the purposes of today's application and the filing of the response.

[41] To put that in context, the petition was filed November 26, 2024, and the response nearly 7 months later, that being on June 9, 2025, despite that the *order nisi* was originally set down for hearing in May 2025 and, after a couple of adjournment requests, moved over to today.

[42] There is some suggestion that that in setting the redemption period, this delay at the request of the Mortgagors should be taken in account.

[43] It was open, as a term of one of those adjournments, for the petitioner to require that the redemption period commence to run from one of those dates, so that whatever the court determined it to be, at least the clock was ticking from that time.

[44] While I have some sympathy for the petitioner’s position, the appropriate time to have addressed that would have been at one of the adjournment requests, rather than effectively seek to do so retroactively. The concern I have in doing so now, is that the Mortgagors were not put on notice that the redemption period was starting to run, so that they could reasonably plan for their redemption efforts.

[45] As noted, the order I make is for *order nisi* with a six-month redemption period.

[46] CNSL A. REDFORD: May I ask if there is any way that we could get leave to apply for conduct of sale at the three-month mark if no action has been taken? And we can check in with my friend for an update at that point before an application is made.

[47] [DISCUSSION WITH COUNSEL REGARDING MARKETING DURING REDEMPTION PERIOD]

[48] THE COURT: I will say it is without prejudice to an application being made for conduct of sale before the expiry of the redemption period. You would have to convince the presider that it was appropriate to do so, but as I noted, generally the mortgagor may choose how it wishes to redeem, it does not have to market the

property. While there may be some authority to allow for conduct of sale before the expiry of a redemption period in some circumstances, the mortgagor's right to redeem remains in place until a final foreclosure order is pronounced. It may be that that is something that the parties can negotiate and get it on the market, I leave that up to you, and make no finding as to whether earlier conduct of sale is appropriate.

[49] The order is "without prejudice to an application for conduct of sale before the expiry and redemption period."

[50] CNSL J. POLLARD: But just to be clear, that's basically every order --

[51] THE COURT: I am not saying it is going to work.

[52] CNSL J. POLLARD: Yeah. That's basically every order.

[53] THE COURT: Yes.

[54] CNSL J. POLLARD: It's belt and suspenders.

[55] CNSL A. REDFORD: Your Honour, I did the calculation on the redemption amount to take the contentious amounts out.

[56] THE COURT: Oh, right. We need to change the number.

[57] CNSL A. REDFORD: The new redemption amount would be $2,378,384.10.

[DISCUSSION AS TO COSTS]

[58] THE COURT: Costs at Scale A.

[59] CNSL J. POLLARD: The wording added is:

> Without prejudice to the petitioner's ability to apply for conduct of sale before --

[60] THE COURT: The expiry of the redemption period.

[61] CNSL J. POLLARD:

> -- the December 19th redemption date, as with every *order nisi*.

[62] THE COURT: Do not add “as with every *order nisi*.” That is just cheeky.

[63] CNSL J. POLLARD: Well, that's the effect of the order.

[64] THE COURT: Maybe.

“Associate Judge Robertson”